IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA SOUTHERN DIVISION

PLACE, INC.; PHASE III VANS, INC.,)	
d/b/a EAST MEDICAL EQUIPMENT AND)	
SUPPLY; and MED-EX,	
Plaintiffs,	
vs.)	Civil Action No. 2:05-CV-1096-MHT-DRB
JACKSON HOSPITAL; MED-SOUTH,)	ORAL ARGUMENT REQUESTED
INC.; JMS HEALTH SERVICES, L.L.C.,)	
d/b/a JACKSON MED-SOUTH HOME)	
HEALTH, L.L.C.; BAPTIST HEALTH,)	
INC.; AMERICAN HOME PATIENT, INC.;)	
BAPTIST VENTURES - AMERICAN)	
HOME PATIENT,	
)	
Defendants.	
)	

MOTION TO DISMISS FIRST AMENDED COMPLAINT

COME NOW Defendants, by and through their respective counsel, and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), mover this Honorable Court to dismiss all claims in the Plaintiffs' First Amended Complaint ("FAC") (Dkt. 26). in support of this motion, Defendants incorporate their contemporaneously filed Memorandum in Support of Motion to Dismiss First Amended Complaint, as if fully set forth herein, and state as follows:

- 1. Plaintiffs' FAC should be dismissed for lack of antitrust standing.
- 2. Plaintiffs have failed to state a claim for relief under the Sherman and Clayton Act; thus, the federal claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

3. The dismissal of Plaintiffs' federal claims under Fed. R. Civ. P. 12(b)(6) requires dismissal of the Alabama Antitrust Act claim under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

4. Plaintiffs have failed to state a claim under the Alabama Antitrust Act, which applies only to transactions in intrastate commerce, and which is otherwise interpreted in accordance with federal antitrust law; thus, Plaintiffs' state law count fails to state a claim and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendants respectfully request that this Court dismiss with prejudice the First Amended Complaint, and grant Defendants such other relief as may be appropriate.

Respectfully submitted this the 24th day of March, 2006.

s/ James E. Williams (with permission)

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CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of March, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of such filing to the following:

Attorney for Plaintiffs: Brian M. Clark Wiggins, Childs, Quinn & Pantazis The Kress Building 301 19th Street North Birmingham, AL 35203 bclark@wcqp.com

I also served a copy of the foregoing by first-class mail on:

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s/ James E. Williams (with permission)

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